

[Filed 1-8-07, Plymouth Co.]

IN THE IOWA DISTRICT COURT IN AND FOR PLYMOUTH COUNTY

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

DEAN QUIRK, d/b/a SPRING LAKE
CONSTRUCTION,

Defendant.

LAW NO. _____

**CONSENT ORDER,
JUDGMENT AND DECREE**

NOW on this 8th day of January, 2007, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6(1)(a) and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant Dean Quirk, d/b/a Spring Lake Construction, admits the violations alleged in paragraph twenty-seven (27) of the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Dean Quirk, d/b/a Spring Lake Construction, is assessed a civil penalty of Five Thousand and no/100 dollars (\$5,000.00) for the violations alleged in the petition. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order,

Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payments of the civil penalty and interest shall be made to the Clerk of the Iowa District Court for Plymouth County.

2. Defendant Dean Quirk, d/b/a Spring Lake Construction, its officers, employees, agents, successors and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from commencing any excavation in the State of Iowa, except during an emergency pursuant to Iowa Code section 480.4(6), without first contacting the statewide notification center (1-800-292-8989) at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoined from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

4. The costs of this action are taxed to the defendant in the amount of \$ _____
(Clerk to enter).

[Jeffrey A. Neary]

JUDGE, Third Judicial District of Iowa

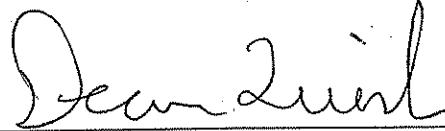
Approved as to form:

THOMAS J. MILLER
Attorney General of Iowa



DAVID R. SHERIDAN, AT0007176

Assistant Attorney General
Lucas State Office Bldg., Gr. Floor
321 E. 12th St., Room 018
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail: dsherid@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF



DEAN QUIRK, d/b/a SPRING LAKE
CONSTRUCTION
317 West 2nd
P.O. Box 117
Odebolt, Iowa 51458
DEFENDANT

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STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
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Plaintiff,

vs.

DEAN QUIRK, d/b/a SPRING LAKE
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Defendant.

LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Dean Quirk, d/b/a Spring Lake Construction, states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Dean Quirk, d/b/a Spring Lake Construction, for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, proceeded with the excavations without any underground facilities having been located and marked, hit and damaged a hazardous liquids pipeline, backfilled over the damaged pipeline and failed to notify the pipeline of the damage.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant Dean Quirk is the owner of a construction company known as Spring Lake Construction with an office located at 317 West 2nd Street, Odebolt, Iowa 51458.

Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include

sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.” Iowa Code § 480.1(10).

Jurisdiction

10. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location outside a city shall include:

1. the name of the county, township, range and section;
2. the name and address of the excavator;
3. the excavator’s telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and

8. if known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. An excavator shall as soon as practical notify the operator when any damage occurs to an underground facility as a result of an excavation. The notice shall include the type of facility damaged and the extent of the damage. Iowa Code § 480.5.

16. If damage occurs, an excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. Iowa Code § 480.5.

17. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area. The excavator shall leave all equipment situated where the emergency was at the time the emergency

was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies. Iowa Code § 480.5.

18. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

19. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

20. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

21. Kanab Pipe Line Company owns and operates an underground hazardous liquids pipeline which runs across Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa. The pipeline is 6-inches in diameter, approximately 20-30 inches deep, under at least 53 pounds per square inch (psig) of pressure. The pipeline is used to transport gasoline from Council Bluffs, Iowa, to Sioux Falls, South Dakota. Gasoline is an explosive and highly flammable substance.

22. On or before November 8, 2005, the defendant conducted excavations in Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa. The defendant did not contact the One Call Notification Center regarding this excavation location and, thereby,

failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation; i.e., using a backhoe to dig an area for the foundation of a hog confinement building, without any underground facilities having been located and marked on the property. During the excavations, defendant's equipment hit and damaged the Kaneb hazardous liquid pipeline, causing property damage and endangering his employees. The defendant failed to notify the operator of the damage, backfilled over the damage, and failed to take reasonable actions to alleviate the emergency.

23. Digging with a backhoe constitutes "excavation" as defined in Iowa Code section 480.1(4).

24. At all material times hereto, the defendant was an "excavator" as defined in Iowa Code section 480.1(5).

25. A buried hazardous liquids pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

26. Prior to these excavations, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt the defendant from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

Violations

27. On or before November 8, 2005, Defendant Dean Quirk, d/b/a Spring Lake Construction, engaged in excavations in Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

28. On or before November 8, 2005, Defendant Dean Quirk, d/b/a Spring Lake Construction, engaged in excavations in Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa, damaged a hazardous liquids pipeline and failed to notify the owner and operator of the damage, in violation of Iowa Code sections 480.1A and 480.5.

29. On or before November 8, 2005, Defendant Dean Quirk, d/b/a Spring Lake Construction, engaged in excavations in Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa, damaged a hazardous liquids pipeline and failed to refrain from backfilling in the immediate area of the underground facilities until the damage had been investigated by the operator, in violation of Iowa Code sections 480.1A and 480.5.

30. On or before November 8, 2005, Defendant Dean Quirk, d/b/a Spring Lake Construction, engaged in excavations in Section 28, Township 93N (Preston Township), Range 47W, Plymouth County, Iowa, damaged a hazardous liquids pipeline, creating an emergency as defined in Iowa Code section 480.1(3), and failed to take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area, leave all equipment situated where the emergency was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies, in violation of Iowa Code sections 480.1A and 480.5.

Prayer for Relief

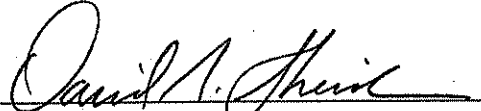
WHEREFORE, Plaintiff State of Iowa, ex rel, Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Dean Quirk, d/b/a Spring Lake Construction, pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(c)(1)-(8), and 480.5, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation;
- b. issue a permanent injunction enjoining Defendant Dean Quirk, d/b/a Spring Lake Construction, from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification; and
- c. issue a permanent injunction enjoining Defendant Dean Quirk, d/b/a Spring Lake Construction, further violations of Iowa Code sections 480.1A and 480.5 and requiring the defendant, in the event of damage to underground facilities during an excavation, to:
 - (1) notify the operators of the damaged underground facility as soon as practical of the damage, the type of damaged facility, and the extent of the damage;
 - (2) refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise; and
 - (3) in the event the damage creates an emergency as defined in Iowa Code section 480.1(3), take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area, leave all equipment situated where the emergency was at the time the emergency was created, and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

Plaintiff further requests that the Court tax the costs of this action to the defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "David R. Sheridan", is written over a horizontal line.

DAVID R. SHERIDAN, AT0007176
Assistant Attorney General
Environmental Law Division
Lucas State Office Bldg., Ground Flr.
321 E. 12th St., Room 018
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail dsherid@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF